

**FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., SW
Washington, DC 20554**

Copies sent by Email

September 13, 2017

NOTICE OF FORMAL COMPLAINT

**THIS LETTER CONTAINS IMPORTANT INFORMATION REGARDING
FILING DEADLINES AND PROCEDURES. PLEASE REVIEW IT CAREFULLY.**

Thomas Jones
David P. Murray
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006

Joseph C. Cavender
Nicholas G. Alexander
Level 3 Communications, LLC
1220 L Street, NW
Washington, DC 20005

Counsel for Level 3
Communications, LLC

Christopher T. Shenk
James P. Young
Michael J. Hunseder
Sidley & Austin LLP
1501 K Street, NW
Washington, DC 20005

Keith M. Krom
Matthew Nodine
Jeanine Poltronieri
AT&T Services, Inc.
1120 20th Street, NW, Suite 1000
Washington, DC 20036

Counsel for AT&T Inc.

Re: Notice of Complaint, *Level 3 Communications, LLC v. AT&T Inc.*, Proceeding No. 17-227, Bureau ID No. EB-17-MD-003

Counsel:

On September 12, 2017, Complainant Level 3 Communications, LLC (Level 3) filed with this Commission a formal complaint against Defendant AT&T Inc. (AT&T) under Section 208 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 208.¹ In accordance with the parties' joint request to waive Section 1.735(c) of the Commission's rules requiring "hand delivery" of the Complaint, a copy of the Complaint should already have been served on AT&T by email.² If that is not the case, AT&T should immediately contact the Commission counsel identified below.

¹ *Level 3 Communications, LLC v. AT&T Inc.*, Formal Complaint of Level 3 Communications, LLC, Bureau ID. No. EB-17-MD-003, Proceeding No. 17-227 (filed Sept. 12, 2017) (Complaint).

² See *infra* note 3 (letter ruling granting the parties' request for limited waiver of 47 CFR § 1.735(c) to allow service of the Complaint via email). Because AT&T should already have received an email copy of both the public and

The Commission has promulgated comprehensive rules regarding formal complaints. *See* 47 CFR §§ 1.720-1.736. *See also Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*). *See also Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*). We strongly encourage the parties to read the formal complaint rules, the *Formal Complaints Order*, the *Formal Complaints Recon Order*, and the *Formal Complaints Amendment Order* fully and carefully.

By letter rulings on August 31, 2017 and September 11, 2017, we granted the parties' joint requests for limited waiver of certain formal complaint rules subject to specified conditions and/or clarifications.³ In accordance with the formal complaint rules, as modified in our letter rulings:

- 1) AT&T shall, on or before **October 9, 2017**, file and serve an Answer to the Complaint that complies with this Notice of Formal Complaint and 47 CFR § 1.724.⁴
- 2) Level 3 shall, on or before **October 24, 2017**, file and serve a Reply to the Answer that complies with this Notice of Formal Complaint and 47 CFR § 1.726.
- 3) AT&T shall, on or before **November 8, 2017**, file and serve a Surreply to the Reply that complies with this Notice of Formal Complaint.
- 4) The parties shall file a public version of all written submissions in this proceeding using the Commission's Electronic Comment Filing System (ECFS). All written submissions shall (a) prominently contain the Proceeding Number and Bureau Id Number referenced above (*see, e.g.*, 47 CFR § 1.7), and (b) be addressed to the Commission Secretary. If a party seeks to file both a public version and a confidential version of a submission, it must file the public (redacted) version on ECFS and file the confidential (unredacted) version in hard copy form with the Office of the Commission Secretary. *See* 47 C.F.R. § 1.731. In addition to filing the unredacted version with the Office of the Secretary, please leave at that office three additional unredacted hard copies marked as "Courtesy Staff Copies. EB-MDRD, 202-418-7330." *See* 47 U.S.C. § 154(i); 47 CFR § 1.735(e). The parties shall serve on one

confidential versions of the Complaint, we also waive Section 1.735(d) of the Commission's rules, which requires that the Commission email a copy of the Complaint to each defendant named in the Complaint. 47 CFR § 1.735(d).

³ *See* Letter from Lisa Saks, Assistant Division Chief, Market Disputes Resolution Division, to Thomas Jones, Counsel for Level 3 Communications, LLC, and Christopher T. Shenk, Counsel for AT&T Inc. (Aug. 31, 2017) (granting limited waivers of 47 CFR §§ 1.721(a)(6), (10), 1.724(a), (c), (f), 1.726(a), (c), (d), 1.729); Letter from Lisa Saks, Assistant Division Chief, Market Disputes Resolution Division, to Thomas Jones, Counsel for Level 3 Communications, LLC, and Christopher T. Shenk, Counsel for AT&T Inc. (Sept. 11, 2017) (granting limited waivers of 47 CFR §§ 1.720(f), 1.735(c)).

⁴ Except in rare circumstances, *motions to dismiss should not be filed*. *Formal Complaints Recon Order*, 16 FCC Rcd at 5696 ("We find this practice of filing a separate motion to dismiss to be unnecessary, in virtually all cases...[T]he Commission's rules are designed so that a defendant's answer is a comprehensive pleading containing complete factual and legal analysis, including a thorough explanation of every ground for dismissing or denying the complaint...[W]e remind defendants that the grounds for a motion to dismiss ordinarily should be raised in the answer alone rather than in a separate pleading.").

another all filings, together with a proof of all such service. *See* 47 CFR § 1.735(f). In addition, the parties shall email to the Commission staff identified below courtesy copies of all filings (both public versions and confidential versions) in a format that permits full text searching. *See* 47 U.S.C. § 154(i); 47 CFR § 1.735(e). *See Formal Complaints Amendment Order*, 29 FCC Rcd at 14081, para. 11 (requiring parties to provide hard copies of submissions to Commission staff upon request).

The parties should note that this proceeding is restricted for *ex parte* purposes pursuant to 47 CFR Part 1, Subpart H. Further, the parties shall retain all records that may be relevant to the complaint, including electronic records, until the Commission's decision in this proceeding is final and no longer subject to judicial review. *See* 47 U.S.C. §§ 154(i), 208(a); 47 CFR § 42.7.

Commission staff assigned to this matter are: Lisa Saks (counsel) (202) 418-7335 and lisa.saks@fcc.gov, and Lisa Boehley (counsel), (202) 418-7395 and lisa.boehley@fcc.gov; and Sandra Gray-Fields (administrative), (202) 418-0961 and sandra.gray-fields@fcc.gov.

This letter ruling is issued pursuant to sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, sections 1.3 and 1.720-1.736 of the Commission's rules, 47 CFR §§ 1.3, 1.720-1.736, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Lisa J. Saks", is positioned above the typed name and title.

Lisa J. Saks, Assistant Division Chief,
Market Disputes Resolution Division
Enforcement Bureau